

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2006

C O R A M

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

W.P.No.10366 of 1996 and
W.P.M.P.No.13725 of 1996 and
W.P.M.P.No.2229 of 1997

Neyveli Lignite Corporation Ltd.,
Corporate Office,
Neyveli - 607 801.

... Petitioner

Vs.

1.N.Durairajan
2.The Presiding Officer,
Industrial Tribunal, Tamil Nadu,
City Civil Court Building,
High Court Campus, Madras- 600 104.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to I.D.No.37 of 1990, on the file of the second respondent viz., The Presiding Officer, Industrial Tribunal, Tamil Nadu, City Civil Court Building, High Court Campus, Madras - 600 104 and quash the award dated 9.2.1996.

For petitioner : Mr.N.Nithianandam
For R1 : Mrs.Rita Chandrasekar

O R D E R

Aggrieved by the award of the Industrial Tribunal, Chennai in I.D.No.37 of 1990, the petitioner-Management is before this Court.

2. The learned Presiding Officer of the Industrial Tribunal directed for reinstatement and payment of back wages to the workman, who was petitioner before the Tribunal.

3. The legality and correctness of the said award is questioned here.

4. In nutshell the facts are that the workman was an employee of the petitioner and on 13.12.1974. He was found leaving the work place without obtaining permission and therefore, it is treated as absence

from the place of work and he was caught by the security official when the workman was trying to escape through the fencing in an unauthorised and objectionable manner and he has given false information without revealing his correct name and place of work, therefore, a charge memo was issued. The appointing authority has initiated disciplinary proceedings and appointed an Enquiry Officer. The Enquiry Officer examined the relevant witnesses marked the connected documents and held that the charges are not proved and the workman was found not guilty. The Disciplinary Authority accepted the report of the Enquiry Officer and thereby, the workman was exonerated from the charges.

5. While so, the Appellate Authority did not accept the enquiry report and orders of the Disciplinary Authority and directed for de-novo enquiry and in the de-novo enquiry, the workman was found to be guilty. Therefore, the workman has challenged the order of the Original authority before the Tribunal and the Tribunal has given a finding in favour of the workman.

6. Heard Shri.N.Nithianandam, learned counsel appearing for the petitioner-Management and Mrs.Rita Chandrasekar, learned counsel for the workman, respondent herein.

7. The point for determination is whether there is any valid grounds for interference with the award of the Tribunal.
Point:

The role of this Court is limited. Until and unless, it is pointed out that the award is perverse and erroneous, then alone the High Court will have to interfere with the award of the Labour Court or the Industrial Tribunal.

8. Shri.N.Nithianandam, learned counsel for the petitioner stated that the Standing Order No.11 of the petitioner reads as follows:

"Inherent Powers of the higher authorities:

The appellate authority or any authority superior to it may on its own motion or otherwise initiate disciplinary action against any workman and award any of the prescribed punishments".

9. While pressing this aspects, the learned counsel has stated that the appellate authority is given sweeping powers to initiate disciplinary action either on its own motion or otherwise and the meaning of word 'otherwise' means on receiving the enquiry report and on receiving the findings of the Disciplinary Authority. Therefore, the Appellate Authority is given power to order for de-novo enquiry.

10. The said preposition has been disagreed by the Tribunal in paragraph No.9 of the award. The Tribunal has given a specific finding that there is no provision either in the Standing Order of the Corporation or any rule enabling the Disciplinary Authority to

initiate de-novo enquiry on the same charges after the disciplinary proceedings have come to closure, on the findings of the Enquiry Officer. The Tribunal also observed that the Management is unable to show any Standing Order that the Appellate Authority has power to order for de-novo enquiry on the very same charges for which, the workman was found not guilty.

11. The Tribunal has observed that the proceedings of the Appellate Authority ordering for de-novo enquiry on the same charges for the second time is illegal and the punishment imposed thereon, on the basis of the report of the de-novo enquiry is not valid.

12. I do not find any illegality or abnormality in the findings of the Tribunal. The Tribunal has relied on following judgments:

1. A.Palani Vs. Union of India and Others (1994 I LLN 435)
2. Dwarkachand Vs. State of Rajasthan (A.I.R. 1958 Rajasthan High Court 38)
3. R.Govindaraj Vs. Government Tool Room & Training Centre and Others (1992 I LLJ 599)

13. The High Court of Madras in the last case has clearly held that the second enquiry on the same charges or almost on similar charges is not permissible unless there is any provision in the Standing Order or Rules.

14. At this stage, it is relevant for this Court to verify the judgment of the Supreme Court of India.

15. In K.R.Deb Vs. Collector, Central Excise, Shillong (A.I.R. 1971 Supreme Court 1447) at paragraph 13 has clearly observed that

"Under Rule 15, on the fact of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion".

16. In State of Punjab Vs Kashmir Singh ((1996) 10 SCC 356) The Hon'ble Supreme Court considered the validity of the second enquiry and held that since the delinquent was exonerated in the

first enquiry, either the Disciplinary Authority or the Appellate Authority has no power to initiate de-novo enquiry on the same charges merely because the findings of the Enquiry Officer in the first enquiry are not in their favour.

17. In Allahabad Jal Sansthan Vs. Daya Shankari Rai & Anr. (Judgments Today 2005 (5) SC 112)

The Hon'ble Supreme Court has held that the termination of employment of workman on the basis of the report of the de-novo enquiry is bad.

18. In Union of India Vs. P.Thayagarajan (1999) 1 SCC 733)

it is held that on facts, it is open to the disciplinary authority to order de-novo enquiry when it is found that enquiry officer has not followed correct procedure in taking evidence of witnesses or illegal procedure has been adopted.

19. In the instant case, the counsel for the petitioner canvassed that the Enquiry Officer questioned the workman after recording the evidence of each witness which is an irregular procedure. The Tribunal has given a specific finding on this arguments stating that it is not an illegality.

20. The counsel for the petitioner could not satisfy how an illegality has been committed in the domestic enquiry. The workman was present. The witness was examined. After recording the statement of witnesses the workman is questioned. There is nothing illegal in the said procedure. The enquiry report discloses that the management witnesses and the statement of the workman was also recorded. Therefore, I have no hesitation to hold that there is no illegality in the findings of the Tribunal.

21. However, the counsel for the petitioner stated that the Tribunal without application of mind, directed for reinstatement of the workman, who has reached the age of superannuation in the year 1991 itself.

22. In the instant case, the award was pronounced on 9th February 1996. He was directed to be reinstated when he is not eligible for reinstatement.

23. The counsel for the respondent has stated that the workman has joined duty in the year 1967 and he became a Foreman in the year 1973 and thereafter, on a flimsy ground, he was subjected to maltreatment by the appellate authority.

24. It is stated that as per the directions of this Court, the Management has deposited Rs.4,50,000/- before the Tribunal and the workman is permitted to draw the interest on the said deposit. It is also stated that the workman is at present aged about 82 years old.

25. Considering the above facts and circumstances, I am of the opinion that since the workman cannot be directed to be reinstated as he attained the age of superannuation, suitable relief has to be given as provided under Section 11 A of the I.D. Act. The counsel for the respondent has produced the sheet wherein, it is stated that if the workman is permitted to work without removal, he would have received Rs.3,24,270.63/- by way of salary. It is stated that the Courts normally grant 50% of the back wages and not full back wages because the work was not extracted during the period of his absence either on suspension or on removal.

26. Since the Management has already deposited Rs.4,50,000/- and the same is pending with the Industrial Tribunal, the workman-respondent is permitted to withdraw Rs.2,25,000/- forthwith. The workman is also entitled for terminal benefits with continuity of service hence, the Management is directed to settle all the terminal benefits to the workman within a period of 30 days from the date of receipt of a copy of this order and the Registry is directed to despatch this order forthwith to the Management. In case if the terminal benefits are not settled within 30 days by the Management, the workman is free to approach this Court for appropriate orders on contempt.

27. Accordingly, the writ petition is disposed of. No costs. Consequently, connected W.P.M.P is also closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sgl

To

1. The Presiding Officer,
Industrial Tribunal, Tamil Ndu,
City Civil Court Building,
High Court Campus, Madras- 600 104.

2. The Chief Personnel Manager,
Neyveli Lignite Corporation Limited,
Neyveli - 607 801.

1 cc to Mrs.Rita Chandrasekar, Sr. 38420

1 cc to Mr.N.A.K. Sarma, Sr. 38392

W.P.No.10366 of 1996

MRD (CO)

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